

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,425

FILE: B-193378

DATE: June 11, 1979

MATTER OF: Humanics Associates

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DIGEST:

1. Protest that agency failed to follow stated evaluation criteria by downgrading proposal for nonexistent and/or irrelevant weaknesses is denied where record shows that admitted errors in evaluation were not such as would have gained award for protester and hence prejudiced it.
2. Scoring proposal under inappropriate criteria may prejudice protester by altering weights assigned to various criteria under RFP's stated evaluation scheme; however, in selecting offeror for award, agency selection officials are not bound by point scores, findings, and recommendations of lower level evaluators.
3. Protest based on agency failure to advise protester of perceived weakness in proposal is denied where it is doubtful in some instances that individual evaluator's concerns were adopted by whole evaluation panel and where, in other instances, notwithstanding evaluation panel's adoption of such concerns, agency's failure to clearly communicate such concerns did not prejudice protester who failed to correct other deficiencies.

Humanics Associates (Humanics) protests the award of a cost-reimbursement services contract to Tuskegee Institute (Tuskegee) under request for proposals (RFP) No. HEW-78-0009, issued by the Department of Health, Education, and Welfare (HEW), for training and technical assistance (T&TA) services to be delivered to Head Start grantees in the State of Alabama.

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Humanics protests on two grounds: (1) that HEW neither followed nor fairly applied the stated evaluation criteria in its evaluation of Humanics' proposal;

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and (2) that HEW failed to advise Humanics of several perceived weaknesses in its proposal, an omission which Humanics believes resulted in deficient negotiations. Notwithstanding HEW's admission that "this procurement has a number of shortcomings," with which we concur, we deny the protest, for the reasons that follow, because in the context of the procurement as a whole, the shortcomings did not prejudice the protester.

The record shows that two factors were determinative in HEW's rejection of the Humanics proposal: Humanics' estimated cost exceeded Tuskegee's by \$14,730; and HEW was concerned about the experience and availability of Humanics' proposed staff. Some personnel were perceived as having limited experience, while others appeared, at the time of the evaluations, to have already committed themselves to work on other HEW contracts.

Humanics focuses its protest on the individual evaluations of its proposal by each of the members of HEW's technical evaluation panel (TEP), for it is at this stage of the procurement that Humanics believes it was prejudiced by the downgrading of its proposal for nonexistent and/or irrelevant weaknesses. This initial prejudice was, in Humanics' view, exacerbated by HEW's failure, during negotiations, to communicate its concerns about the nonexistent and/or irrelevant weaknesses to Humanics. This, Humanics contends, resulted in severe prejudice, since it was unable to clarify its submission and was thus denied any opportunity to improve its already artificially low score.

The RFP stated that "paramount consideration shall be given to the evaluation of technical proposals, as well as price, in the award of a contract." It further provided that all proposals would be evaluated in accordance with the stated evaluation factors (criteria), with award being made to the firm "whose proposal demonstrates that the firm would be most advantageous to the Government, price and other factors considered."

The evaluation criteria had the following weights:

<u>"Weighting</u>	<u>Criteria</u>
"20 Points	1. * * * proposal * * * organization, understanding of the task required, ability to expand upon subject matter presented in RFP * * *.
"20 Points	2. * * * organization's knowledge of and experience in Head Start, [and] other * * * projects involving extensive training.
"30 Points	3. * * * organization's resources in terms of ability to develop materials, technical knowledge of the subject areas and other necessary capabilities to conduct the training and render technical assistance.
"10 Points	4. * * * administrative controls * * *.
"5 Points	5. * * * offeror's knowledge of and experience with the Head Start grantees in Region IV.

"CRITERIA FOR BUSINESS PROPOSAL EVALUATION

"15 Points 6. Cost proposal (* * *)."

Three proposals were received in response to the solicitation. The TEP scored the proposals for the purpose of making a recommendation regarding which offers should be considered to be within the competitive range. The contracting officer found two proposals to be within the competitive range, numerically ranked as follows:

	<u>Tech. Score</u>	<u>Business Score</u>	<u>Cost</u>
Tuskegee	77.4	15	\$232,011
Humanics	75.6	0	246,741
HEW estimate			237,000

In the process of evaluation, the TEP members commented on the respective strengths and weaknesses of the the two offerors. The TEP report, a summarized version of the score-sheet comments, furnished the basis for oral negotiations

with each offeror. Humanics was perceived in the report as having extensive technical knowledge, background and experience in Region IV Head Start programs, but lacking in an ability to provide Child Development Associate (CDA) training. There was also a concern about Humanics' ability to actually furnish the staff which it proposed to use.

On September 11, 1978, HEW initiated telephonic negotiations with the two offerors. Humanics reports that HEW's contracting officer requested the following information in its Best and Final Offer (B&FO):

- "1. A list of key personnel and their resumes;
- "2. A letter of committment from each of the key personnel;
- "3. A revised cost proposal reflecting anticipated changes in the fringe benefit, G & A, and overhead rates; and
- "4. Confirmation of the location of Humanics' proposed Alabama facility."

HEW's project officer reviewed the B&FO's of Tuskegee and Humanics. He advised that Tuskegee had cured its deficiencies under criterion 2 and criterion 4 and that its technical score should be increased from 77.4 to 81, giving Tuskegee a combined technical/business score of 96. On the other hand, he advised that Humanics' B&FO did not warrant a revision in its 75.6 technical rating as it had failed to cure its staffing deficiency. The contracting officer, on the basis of the project officer's advice and her own review of the B&FO cost proposals, concluded that the lower cost Tuskegee proposal was most advantageous to the Government and recommended award to Tuskegee. Award was made to Tuskegee in the total estimated amount of \$232,001 on September 29, 1978.

Humanics' technical proposal was viewed by HEW from three successive perspectives. Initially, from the perspective of the individual evaluators, as reflected on their respective scoresheets, there was concern in the following areas: Humanics' ability to offer CDA training; Humanics' lack of an affiliation with an Alabama institution of higher learning; Humanics' failure to address an

aspect of a validation requirement; and Humanics' ability to properly staff the project. Then, from the collective perspective of the TEP, as summarized in the TEP report to the contracting officer, the concerns were limited to the areas of Humanics' ability to offer CDA training and its ability to staff the project. Finally, from the perspective of the contracting officer, following negotiations, as reflected in HEW's telegraphic request for B&FO, the technical concern had narrowed to Humanics' ability to staff the project. The estimated cost of Humanics' proposal was a parallel HEW concern throughout the evaluation process.

Humanics' protest is premised on the assumption that HEW's first perspective of its proposal, that of the individual evaluators, is more significant than either the second, that of the whole TEP, or the third, that of the contracting officer following negotiations. Humanics has totaled the sum of allegedly erroneous remarks found on the scoresheets of the individual evaluators and concluded that it would have had a higher initial score on its technical proposal than Tuskegee if all TEP members had properly evaluated its proposal. For instance, two of the five evaluators penalized Humanics a total of 7 points for its inability to offer CDA training; one evaluator deducted 10 points for both Humanics' failure to show an affiliation with an Alabama institution of higher learning and its failure to clarify what validation assistance the State training office would provide; and one evaluator subtracted a total of 13 points from criteria 1, 2, and 3 based on a concern that, in light of Humanics' three other HEW contracts, its staff was spread so thin that it could not effectively handle a fourth contract.

While some of Humanics' allegations are sound, we believe that others are not well founded. For example, HEW reports that the 7-point CDA training deduction was justified because Humanics failed to demonstrate to the TEP's satisfaction that it could perform CDA training of an acceptable quality. In support of its position, HEW points out sections of Humanics' proposal which merely parrot the RFP work statement. The RFP warns offerors that "[p]roposals which merely offer to conduct a program in accordance with the requirements of the Government's Scope of Work will be considered nonresponsive to this request and will not be considered further. The offeror

must submit an explanation of the technical approach and a detailed description of the tasks to be performed to achieve the project objectives."

Humanics characterizes one evaluator's deduction of 10 points, for the aforementioned affiliation/validation deficiency, as "totally arbitrary and irrational." However, we think it is arguable that the deduction was well founded since the statement of work requirements (1) that the contractor will "assist non-Head Start staffs * * * to acquire CDA training from the institutions in their geographic area" and (2) that "Region IV * * * will require a minimum two (2) CDA training institutions in each state" to work with the contractor in the development of at least two training sessions, each session having a 2-day duration, could in our opinion lead an evaluator to the conclusion that the lack of an affiliation with an Alabama institution made Humanics' proposal somewhat less desirable. Moreover, the record indicates that although Humanics complied with two of the RFP's validation requirements, it failed to comply with a third which required it to monitor, report on, and provide needed technical assistance to grantees who received an in-depth validation in fiscal year 1977-1978. However, HEW points out that even if it is conceded that the 10 points were erroneously deducted and all scoring by the evaluator in question is disregarded, the net effect of disregarding his scoring is to change the average technical scores of Humanics to 77.75, and of Tuskegee to 76.75, which, in HEW's opinion, indicates virtual technical equality.

We believe there is merit in Humanics' objection to the action of another evaluator who downgraded the Humanics proposal a total of 13 points under three separate criteria for what is essentially a staffing deficiency. The score-sheet in question reads, in part, as follows:

	<u>"Weight Factor (%)</u>	<u>Score</u>	<u>Remarks (Define strong and weak areas)</u>
[criterion 1]	20	16	Very Good-however how thin can Humanics spread across our 8 state region?
[criterion 2]	20	16	Same comment as above
[criterion 3]	30	25	" " " " "

Although HEW admits that the 4-point score reduction under criterion 1 (proposal organization) may have been erroneous, it argues that the 4 points deducted under criterion 2 (organization knowledge and experience in training) and the 5 points deducted under criterion 3 (organization resources) are apposite since they are clearly related to the experience and availability of Humanics' proposed staff. HEW further argues that "[w]hile the similar reduction in regard to Criterion I may have been erroneous under that criterion a reduction of similar magnitude could have been made under Criterion II or III and the 'correct' deduction would have produced the same net effect."

We agree in part and disagree in part with HEW's analysis. The RFP is explicit in its statement of what is required in the technical proposals with regard to proposed staff. It provides:

"2. Qualifications of Offeror's Personnel

"a. Experience:

General background, experience, and qualifications of the offeror. Special notation should be made of similar or related Government Programs, performed for the Government including documentation with reference to the applicable contract numbers and the supervising cognizance agencies.

"b. Personnel:

Personnel who will be assigned for direct work on this program. Information is required which will show the composition of the task or work group, its qualifications, and recent experience with similar equipment or programs. Special mention shall be made of direct technical supervisors, key technical personnel, and the percentage of time each will be assigned to this program. Resumes shall be submitted which will indicate education, background, recent

experience, and specific scientific or technical accomplishments.

- "c. Additional personnel, if any, who will be required for full-time employment, or on a subcontract or consultant basis. The technical areas, character and extent of subcontract or consultant activity will be indicated and the anticipated sources will be both specified and qualified." (Emphasis supplied.)

The RFP statement of work provides:

- "3. The proposal shall contain succinct but adequate information of previous related experience, by the offeror as a firm as well as by staff members who will be involved in the project. Previous experience should be in administrative and management component areas and handicapping conditions.

* * * * *

- "e. Project personnel must be specifically identified. Such statements as 'staff will consist of personnel such as' will be considered nonresponsive. If a new staff member will be hired contingent on award of this contract, a letter of intent by the identified person shall be required of the person to be hired.

- "f. The proposal must be written by proposed key staff members for the project. They should be identified by name and function in the project and be identified according to the sections of the proposal they wrote." (Emphasis supplied.)

Both criterion 2 and criterion 3 clearly relate to the above. Moreover, HEW's concern about Humanics' proposed staff remained constant throughout the three successive layers of evaluation until it ultimately became the decisive technical concern behind the rejection of Humanics' proposal.

Notwithstanding the above, we do not believe that it can be assumed that an evaluator restricted to two criteria, instead of three, would automatically increase the amount deducted so as to produce the same net effect as if he was rating three criteria. We have held that scoring under inappropriate criteria may be prejudicial to a protester since it tends to make the factor scored worth more in the evaluation process than the weight it was assigned in the RFP. The Center for Education and Manpower Resources, B-191453, July 7, 1978, 78-2 CPD 21.

Despite our reservations about the manner in which this particular evaluator rated Humanics' proposal and assuming that there is sufficient merit in Humanics' objection to the scoring of the evaluator who deducted the 10 points for affiliation/validation to justify total disregard of his scoring, we do not believe that Humanics can prevail on its first ground of protest, HEW's failure to follow and apply the stated evaluation criteria. We hold this view because, in our opinion, the errors, which the record indicates did occur, in the evaluation were not of such a nature as would prejudice Humanics. In The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15, we held that in selecting an offeror for award, agency selection officials are not bound by point scores, findings, or recommendations of lower level evaluators and we also observed that:

"* * * 'it is apparent that averaged scores may reflect the disparate, subjective and objective judgments of the evaluators,' 56 Comp. Gen. at 716, and it is for that reason that numerical scores in general are used as guides in selection decisions, but 'usually do not determine the outcome of a competitive

source selection.' Telecommunications Management Corp. 57 Comp. Gen. 251, 254 (1978), 78-1 CPD 80; see also Grey Advertising, Inc. 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 * * *."

Here, three of five evaluators ranked Tuskegee high, while the other two evaluators arrived at the opposite conclusion and ranked Humanics high. This incongruity is a weak basis for a conclusion that, but for a few points, Humanics' proposal would have been a clear winner. The Ohio State University Research Foundation, supra. Moreover, even if the scoring of the evaluator who deducted the 10 points for affiliation/validation is disregarded and the 4 points inappropriately deducted from criterion 1 are restored, we note that Humanics' overall (technical/business) score only increases to 78.75 whereas Tuskegee's final overall rating is 96, of which 81 points are technical. Further, the technical concern which ultimately proved decisive, the staffing deficiency, was discussed with Humanics. While Humanics' B&FO substituted some key personnel, it still proposed a key staff member who was committed full time to another HEW contract.

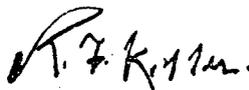
Like its first ground of protest, Humanics' second ground, that HEW failed to advise it of several perceived weaknesses in its proposal, has some merit. Humanics contends that HEW did not mention concerns regarding: Humanics' failure to fully meet the validation requirement; its non-affiliation with an Alabama institution of higher learning; its inability to offer CDA training; nor its staff deficiency. We have previously noted that these concerns reflect the scoresheet comments of individual TEP members.

Although HEW admits that the validation requirement concern of one evaluator was not discussed with Humanics, we cannot conclude on this record that it ought to have been. It is not clear that the TEP, as a whole, viewed Humanics' response to the validation requirement as a ground for concern, for there is no mention of the matter in its report to the contracting officer. On the other hand, the TEP did not act to restore the points which the individual evaluator deducted as a result of his peculiar concern. Thus, the exact status of HEW's concern about the validation requirement is as best ambiguous.

Much the same can be said about Humanics' nonaffiliation with an Alabama institution of higher learning. While HEW states that the comment represents an aspect of Humanics' proposal which "in the view of one evaluator made the Humanics proposal somewhat less desirable," it is not clear that the TEP, as a whole, so regarded it. However, the TEP did not adjust the total average point scores so as to clearly show that it disagreed.

Our principal concern, the manner in which HEW conducted negotiations with Humanics, stems from HEW's admission that the contracting officer did not "clearly cover" the matter of CDA training in the negotiations. Humanics' ability to offer CDA training was clearly a concern of the whole TEP. The TEP report cites inability to offer CDA training as Humanics' sole weakness under criteria 2 and 3. Such a weakness should have been discussed with Humanics. See Dynalectron Corporation, B-184203, March 10, 1976, 76-1 CPD 167. We do not however believe that the contracting officer's failure to "clearly cover" the matter of CDA training prejudiced Humanics because of its previously discussed inability to cure the deficiencies in its proposed staff. Although Humanics alleges that the staff deficiency was not discussed with it, HEW asserts that it was. The above-mentioned fact that Humanics made some key personnel substitutions in its B&FO would tend to support HEW's position. Moreover, if (1) the 7 points deducted for Humanics' CDA training deficiency are restored, on the theory that if it had been discussed Humanics would have cured the deficiency and regained the 7 points; (2) the scoring of the evaluator who deducted the 10 points for affiliation/validation is disregarded; and (3) the 4 points erroneously deducted from criterion 1 for the staffing deficiency are restored the end result is a technical score of 80.5 for Humanics. In view of Tuskegee's final technical score of 81 we agree with HEW that both offers are essentially technically equal. In such a situation estimated cost may become the determinative factor in award selection. The Onyx Corporation, B-187599, July 20, 1977, 77-2 CPD 37.

Accordingly, the protest is denied.



Deputy Comptroller General
of the United States